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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA, SAN JOSE DIVISION

LOS PADRES FORESTWATCH, a non-profit
organization,
Plaintiff,
v.
UNITED STATES FOREST SERVICE, PEGGY
HERNANDEZ, in her official capacity as Forest
Supervisor for the Los Padres National Forest,
Defendants.

Case No. C 10-03653

**STIPULATION RE INTERIM
INJUNCTIVE MEASURES
AND ORDER**

Honorable Lucy H. Koh (LHK)

In response to the Court's ruling granting Plaintiff Los Padres ForestWatch's Motion for Preliminary Injunction, Plaintiff and Defendants United States Forest Service and Peggy Hernandez (together the "parties") hereby stipulate to the following interim measures that will apply to the road brushing project pending the Court's ruling on the merits of this action, as follows:

In consideration of the release provided by Plaintiff in paragraph 1, above, and the mutual promises contained herein, Defendants hereby agree to the following operating conditions with respect to the Brushing Project:

1. Roadside Brushing Restrictions:

- a. The Forest Service will avoid roadside brushing of vegetation in Wilderness Areas.
- b. The Forest Service will avoid roadside brushing of vegetation within 15 feet of the boundaries of any riparian or wetland areas within the Brushing Project areas as determined by the On-site Forest Service Biologist. The Biologist shall make the boundary determination based on the area distinguished by characteristic plant and/or animal communities of riparian or wetland habitats, as appropriate. The Forest Service shall extend the buffer beyond 15 feet if recommended by the On-site Forest Service Biologist.
- c. The Forest Service will avoid roadside brushing of vegetation on East & West Cuesta Ridge.
- d. The Forest Service will avoid roadside brushing of vegetation on Fernandez C road. The On-site Forest Service Biologist will flag areas to be omitted from roadside brushing if such areas are identified by the On-site Forest Service Biologist as having the primary constituent elements of the designated critical habitat for the Camatta Canyon Amole on the Fernandez, 1 Fernandez, Fris, Navajo, and 1 Navajo roads.
- e. The Forest Service will avoid roadside brushing of vegetation on Branch Creek Road if any stretch of road is narrower than a normal two-vehicle width.

2. The Forest Service will limit vegetation clearing to only that necessary to maintain clearance and sight visibility for vehicles (i.e. overhanging vegetation, or vegetation obstructing visibility around curved portions of roadways may be pruned, but no clearing outside of that) in the following areas (maps identifying these areas are attached as Attachment 6):

- a. Proposed or Existing Special Interest Areas.
 - b. Critical Biological Zones.
 - c. Proposed or existing Research Natural Areas.
3. Protection of Trees
- a. The Forest Service will avoid removing trees over 6" diameter at breast height ("DBH"); above that limit, the Forest Service may prune if needed for vehicle clearance or public safety.
4. Prevention of Off-Highway Vehicle ("OHV") Trespass.
- a. The Forest Service will use best efforts to avoid brushing vegetation in areas where the Forest Service has determined such vegetation would discourage OHV trespass.
5. Protection of Listed Species
- a. The On-site Forest Service Biologist will conduct an inspection of the Project area to look for the presence of listed species prior to the brushing of that area. The On-site Forest Service Biologist will flag areas to be omitted from roadside brushing in accordance with the procedures approved by the U.S. Fish and Wildlife Service in its letter of concurrence dated November 10, 2010 (Attached as Attachment 2). As part of these procedures, the On-site Forest Service Biologist will determine prior to any brushing whether an area consists of suitable habitat for a listed species. If an area is determined to be suitable habitat, the Forest Service shall proceed as if that area is occupied by the listed species. The On-site Forest Service Biologist will continue to ensure that all mandatory and recommended restrictions set forth in the Forest Service's Biological Assessment ("Project BA") (Attached as Attachment 3) and Botanical Issues memo prepared by Lloyd Simpson (the "Botanical Memo") (Attached as Attachment 4), are applied, as appropriate, and in the discretion of the On-site Forest Service Biologist.
 - b. In accordance Plan Standard S28 of the September 2005 Land Management Plan for the Los Padres National Forest, the Forest Service will avoid brushing vegetation within 0.5 miles of active condor roosting areas, and within 1.5 miles of active condor nesting areas. The Forest Service will also incorporate measures to avoid impacts to California condors on all Project areas, including measures such as those designed to avoid condors interacting with equipment and/or

1 personnel, and shall coordinate with U.S. Fish and Wildlife Service to identify the locations of
2 roosting and active nesting areas..

3 c. In accordance with the Project BA, the Forest Service will impose a limited operating
4 period prohibiting roadside brushing between March 1 and August 1 for all work in areas identified
5 by the On-site Forest Service Biologist as arroyo toad breeding habitat.

6 d. The Forest Service will avoid vegetation brushing within 50 feet of riparian areas
7 associated with suitable or occupied Red Legged Frog habitat as identified by the On-site Forest
8 Service Biologist. The Forest Service will flag areas to be omitted from roadside brushing areas
9 having the primary constituent elements of designated critical habitat for Red-legged frog on La Brea
10 Road and Road to Lazy Camp.

11 e. The Forest Service will avoid brushing vegetation in any suitable or occupied habitat
12 as identified by the On-site Forest Service Biologist for the threatened Kern primrose sphinx moth
13 on the Mt. Pinos Ranger District, including their host plants, (*Camissonia* sp.) and associated
14 non-host plants.

15 f. The Forest Service will avoid brushing vegetation in the Brazil Canyon Ranch Area
16 between May 1 and September 30 in all areas determined by the On-site Forest Service Biologist to
17 be occupied by Smith's blue butterflies or to be suitable habitat for Smith's blue butterflies, in
18 accordance with the standard set forth in the U.S. Fish and Wildlife Service's September 13, 2007
19 Biological Opinion (Attached as Attachment 5).

20 6. Protection of Sensitive Species

21 a. The Forest Service will use its best efforts to avoid vegetation brushing in areas
22 identified by the On-site Forest Service Biologist during the inspection of the Project area as likely
23 to constitute habitat for all Forest Service sensitive species, if brushing those areas would cause
24 adverse impacts to those species. The On-site Forest Service Biologist shall consider the need for
25 protective measures for Forest Service sensitive species that were not addressed in the Project BA
26 including but not limited to southwestern pond turtle, two-striped garter snake, yellow-blotched
27 salamander, and legless lizard..

28 b. The Forest Service will impose a limited operating period to avoid brushing within

1 1/4 mile of identified nesting sites of the California Spotted Owl, or within an owl activity center
2 where the nest site is unknown, during the breeding season from February 1 to August 15 unless
3 surveys confirm that California spotted owls are not nesting.

4 c. The Forest Service will implement all recommendations and requirements in the
5 Botanical Memo. The Forest Service will avoid brushing areas with known sensitive species as
6 identified by the On-site Forest Service Biologist, even when such species are dormant if the On-site
7 Forest Service Biologist determines that there is a risk that the operating equipment would snag and
8 rip out underground bulbs or rhizomes.

9 d. The Forest Service will impose a limited operating period to avoid brushing between
10 February 1 and September 1 in areas within 1/4 mile of Northern Goshawk nest sites to protect active
11 nesting goshawks on Frazier Mountain and other areas. The On-site Forest Service Biologist shall
12 conduct an inspection of the Project area to look for the presence of active nesting areas prior to
13 brushing in those areas.

14 7. Protection of Migratory Birds

15 Prior to brushing, the On-site Forest Service Biologist shall conduct an inspection of the Project area
16 to look for active migratory bird nests in the area. If the On-site Forest Service Biologist identifies
17 an active migratory bird nest, then the Forest Service shall avoid brushing activities within 15 feet
18 of the nest during the breeding and nesting seasons (approximately between February and August.)

19 8. Avoidance of Flagged Areas

20 a. The Forest Service will use best efforts to avoid brushing activity in areas which the
21 On-site Forest Service Biologist flagged in accordance with this Settlement Agreement as areas to
22 be omitted from roadside brushing. These efforts may include actions such as regular meetings with
23 the contractor to identify areas to avoid, rechecking flagging before work begins, and/or having an
24 inspector walk in advance of the mowers.

25 b. The Forest Service will notify Forest Watch of any instances where brushing of
26 vegetation occurred in areas flagged by an On-site Forest Service Biologist to be omitted from
27 brushing activity. The Forest Service shall provide to ForestWatch a notice of improper brushing
28 report following the discovery of improper brushing by the On-site Forest Service Biologist or other

1 knowledgeable Forest Service employee. The Forest Service shall use best efforts to provide this
2 notice promptly to Forest Watch. Notice shall include the date, location, and a short description of
3 the activity. Forest Watch may request additional information from the Forest Service if it desires.

4 9. Notification Requirements

5 a. The Forest Service will provide ForestWatch with revised maps that incorporate the
6 terms and conditions of this Settlement Agreement, showing which roads have already been brushed
7 and which roads are scheduled for brushing. The Forest Service may do such revisions through hand
8 edits to existing maps or Geographic Information Systems ("GIS") mapping, at its discretion. The
9 Forest Service shall provide such maps prior to the commencement of work in areas that have not
10 previously been subject to brushing activity. For areas subject to previous brushing activity, such as
11 in the Monterey and Santa Lucia Ranger Districts, the Forest Service only needs to provide revised
12 maps if additional work is to be performed in those areas.

13 b. The Forest Service will provide ForestWatch with any contract amendments for this
14 Project, within one week of the effective date of the amendments.

15 c. The Forest Service will provide access to Forest Watch to inspect open ungated
16 Project work areas with 24 hours notice to allow Forest Watch to monitor the Forest Service's
17 compliance with the terms and conditions of this Settlement Agreement. Where Project work occurs
18 within gated roads, the Forest Service shall use its best efforts to allow access to Forest Watch at a
19 mutually convenient time and under conditions prescribed by the Forest Service upon a written or
20 electronic-mail ("e-mail") request from Forest Watch to the District Ranger from Plaintiff.

21 d. During each month of project implementation, the Forest Service will provide
22 ForestWatch with a weekly e-mail report summarizing work completed since the last report, which
23 protective measures contained in the Project BA or Botanical Memo were implemented during the
24 report time period, whether these protective measures were effective at avoiding impacts, and the
25 results of any field inspection of the project area, and the projected work schedule.

26 10. Consultations

27 a. The Forest Service requested initiation of consultation with the U.S. Fish and Wildlife
28 Service on October 13, 2010, to update the December 22, 2000 "Biological Opinion for Ongoing

Activities Occurring in the Monterey Ranger District of the Los Padres National Forest, Monterey County, California (2670) (1- 8-99-F-74)" for the federally-endangered Smith's blue butterfly (*Euphilotes enoptes smithi*) (the "December 2000 BO"). The Forest Service will continue this process and timely respond to FWS requests for information about it.

b. In addition, the Forest Service will request the initiation of programmatic consultation with the U.S. Fish and Wildlife Service and the National Marine Fisheries Services("NMFS") for all ongoing road maintenance activities relating to National Forest System Roads as defined in 36 C.F.R. 212.1, on the Los Padres National Forest. Such consultation will be limited to system roads. The Forest Service shall make its request to initiate this programmatic consultation within 180 days of the date of this Settlement Agreement. As part of this consultation, the Forest Service shall prepare a Biological Assessment .

c. Within two months of the effective date of the Settlement Agreement, Forest Service will provide FW with the opportunity to review all non-system road files and to make copies of the information. Any copies made will be at Forest Watch's expense. The Forest Service shall provide this information subject to the applicable restrictions contained within the Freedom of Information Act ("FOIA") and any other applicable law.

d. The Forest Service shall provide Plaintiff via e-mail or other electronic media delivery all formal documents submitted to and received from U.S. Fish and Wildlife Service and NOAA for the consultations identified in paragraphs 9(a) and 9(b) promptly upon submitting or receiving such documents.

Dated: March 10, 2011

/s/ Michael W. Graf
Michael W. Graf
Attorneys for Plaintiff

/s/Peter C. Whitfield
Peter C. Whitfield,
United States Department of Justice
Attorneys for Defendants


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PURSUANT TO STIPULATION, IT IS SO ORDERED:

The Interim Injunctive Measures stipulated by the parties shall constitute the terms of the preliminary injunction ordered by the Court on March 4, 2011.

The expedited briefing schedule on summary judgment remains in effect. The Court encourages the parties to continue their efforts at finalizing a settlement. Without a finalized settlement, however, the Court will not delay this litigation further.

Date: March 11, 2011



LUCY H. KOH
United States District Judge